

Montana Water Court
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FILED
02/14/2023
Sara Calkins
CLERK
Montana Water Court
STATE OF MONTANA
By: D'Ann CIGLER
41U-0084-R-2023
Stern, Anika
1.00

IN THE WATER COURT OF THE STATE OF MONTANA
UPPER MISSOURI DIVISION
DEARBORN RIVER BASIN (41U)
PRELIMINARY DECREE

* * * * *

CLAIMANT: Ellen K. Murphy

CASE 41U-0084-R-2023

41U 96932-00

41U 96934-00

41U 96935-00

NOTICE OF FILING OF MASTER'S REPORT

This Master's Report was filed with the Montana Water Court on the above-stamped date. Please review this report carefully.

You may file a written objection to this Master's Report within **10 days** of the stamped date if you disagree or find errors with the Master's findings of fact, conclusions of law, or recommendations. Rule 23, W.R.Adj.R. If the Master's Report was mailed to you, the Montana Rules of Civil Procedure allow an additional 3 days be added to the 10-day objection period. Rule 6(d), M.R.Civ.P. If you file an objection, you must serve a copy of the objection to all parties on the service list found at the end of the Master's Report. The original objection and a certificate of mailing to all parties on the service list must be filed with the Water Court.

If you do not file a timely objection, the Water Court will conclude that you agree with the content of this Master's Report.

MASTER'S REPORT

FINDINGS OF FACT

1. Ellen K. Murphy is the record owner of claims 41U 96932-00, 41U 96934-00, and 41U 96935-00.

2. Claims 41U 96932-00, 41U 96934-00, and 41U 96935-00 were decreed with DNRC issue remarks:

41U 96932-00:

AN AMENDMENT WAS SUBMITTED ON 09/13/2021 REQUESTING TO AMEND THE PLACE OF USE. THE AMENDMENT WAS NOT PROCESSED. THE AMENDMENT WILL BE REVIEWED BY THE COURT AFTER THE ISSUANCE OF THE PRELIMINARY DECREE.

AN AMENDMENT WAS SUBMITTED 09/13/2021 TO AMEND THE PLACE OF USE AND VOLUME . THE AMENDMENT SUBSTANTIALLY CHANGES THE ORIGINALLY FILED STATEMENT OF CLAIM.

AN AMENDMENT WAS SUBMITTED ON 09/13/2021 REQUESTING TO AMEND THE VOLUME. THE AMENDMENT WAS NOT PROCESSED. THE AMENDMENT WILL BE REVIEWED AFTER THE ISSUANCE OF THE PRELIMINARY DECREE.

POINT OF DIVERSION, SOURCE NAME, MEANS OF DIVERSION, AND RESERVOIR RECORD WERE MODIFIED AS A RESULT OF DNRC REVIEW UNDER MONTANA WATER COURT REEXAMINATION ORDERS. IF NO OBJECTIONS ARE FILED TO THIS CLAIM, THESE ELEMENTS WILL REMAIN AS THEY APPEAR ON THIS ABSTRACT AND THE REMARK WILL BE REMOVED FROM THE CLAIM.

41U 96934-00:

AN AMENDMENT WAS SUBMITTED ON 09/13/2021 REQUESTING TO AMEND THE VOLUME. THE AMENDMENT WAS NOT PROCESSED. THE AMENDMENT WILL BE REVIEWED AFTER THE ISSUANCE OF THE PRELIMINARY DECREE.

SOURCE NAME, MEANS OF DIVERSION AND RESERVOIR RECORD WERE MODIFIED AS A RESULT OF DNRC REVIEW UNDER MONTANA WATER COURT REEXAMINATION ORDERS. IF NO OBJECTIONS ARE FILED TO THIS CLAIM, THESE ELEMENTS WILL REMAIN AS THEY APPEAR ON THIS ABSTRACT AND THE REMARK WILL BE REMOVED FROM THE CLAIM.

41U 96935-00:

AN AMENDMENT WAS SUBMITTED ON 09/13/2021 REQUESTING TO AMEND THE VOLUME. THE AMENDMENT WAS NOT PROCESSED. THE AMENDMENT WILL BE REVIEWED AFTER THE ISSUANCE OF THE PRELIMINARY DECREE.

SOURCE NAME, MEANS OF DIVERSION AND RESERVOIR RECORD WERE MODIFIED AS A RESULT OF DNRC REVIEW UNDER MONTANA WATER COURT REEXAMINATION ORDERS. IF NO OBJECTIONS ARE FILED TO THIS CLAIM, THESE ELEMENTS WILL REMAIN AS THEY APPEAR ON THIS ABSTRACT AND THE REMARK WILL BE REMOVED FROM THE CLAIM.

3. Based on a review of the record, it appears the Amendments referenced in the issue remarks were submitted by Claimant Ellen K. Murphy because of DNRC claimant contact, to resolve issue remarks the DNRC intended to place on the claims.

4. Based on the record, the following modifications should be made to the claims in this Case, consistent with the Amendments submitted by Claimant Ellen K. Murphy, and remarks:

41U 96932-00:

Volume: 25.00 125.00 AC-FT

Place of Use:

ID	Acres	Govt Lot	Qtr Sec	Sec	Twp	Rge	County
1	25.00		SWSW 1/4	28	18N	5W	LEWIS AND CLARK
Total:	25.00						

41U 96934-00:

Volume: 25.00 99.50 AC-FT

41U 96935-00:

Volume: 25.00 99.50 AC-FT

5. No objections were filed.

PRINCIPLES AND CONCLUSIONS OF LAW

1. A properly filed Statement of Claim for an existing water right is prima facie proof of its content. Section 85-2-227, MCA. This prima facie validity may be overcome by evidence showing that one or more elements of the claim are incorrect. Rule 19, W.R.Adj.R., *Nelson v. Brooks*, 2014 MT 120; 375 Mont.86, 95; 329 P.3d 558, 564.

2. The Water Court must address all issue remarks decreed on a claim. Section 85-2-248, MCA.

3. The claims in this Case were decreed with notice-type issue remarks. As no objections were filed, no further proceedings are required.

RECOMMENDATIONS

1. Claims 41U 96932-00, 41U 96934-00, and 41U 96935-00 should be amended as shown in Finding of Fact No. 3.

2. The issue remarks should be removed from the claims in this Case.

Post Decree Abstracts of Water Right Claims are served with the Report for review.

ELECTRONICALLY SIGNED AND DATED BELOW.

Service via USPS Mail:

Ellen K. Murphy
4413 Glass Dr
Helena, MT 59602-5602

**POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
DEARBORN RIVER
BASIN 41U**

Water Right Number: 41U 96932-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: ELLEN K MURPHY
4413 GLASS DR
HELENA, MT 59602 5602

Priority Date: FEBRUARY 1, 1902

Type of Historical Right: FILED

Purpose (use): IRRIGATION

Irrigation Type: FLOOD

Flow Rate: A SPECIFIC FLOW RATE HAS NOT BEEN DECREED FOR THIS USE FROM THIS ONSTREAM RESERVOIR.

Volume: 25.00 AC-FT

Climatic Area: 3 - MODERATE

Maximum Acres: 25.00

Source Name: SPRING, UNNAMED TRIBUTARY OF AUCHARD CREEK

Source Type: SURFACE WATER

SOURCE IS COMPOSED OF SEVERAL SPRINGS WITHIN THE POINT OF DIVERSION LEGAL LAND DESCRIPTION.

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		SESWNW	28	18N	5W	LEWIS AND CLARK

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: DAM

Reservoir: ONSTREAM

<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
	SESWNW	28	18N	5W	LEWIS AND CLARK

Diversion to Reservoir: DIVERSION # 1

Dam Height: 13.00 FEET

Depth: 10.00 FEET

Surface Area: 0.25 ACRES

Capacity: 1.00 ACRE-FEET

SEE THE RESERVOIR WORKSHEET IN THE CLAIM FILE FOR ADDITIONAL RESERVOIR DATA.

Period of Use: APRIL 1 TO NOVEMBER 30

Place of Use:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	25.00		SWSW	28	18N	5W	LEWIS AND CLARK
Total:	25.00						

**POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
DEARBORN RIVER
BASIN 41U**

Water Right Number: 41U 96934-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: ELLEN K MURPHY
4413 GLASS DR
HELENA, MT 59602 5602

Priority Date: MAY 15, 1906

Type of Historical Right: FILED

Purpose (use): IRRIGATION

Irrigation Type: FLOOD

Flow Rate: A SPECIFIC FLOW RATE HAS NOT BEEN DECREED FOR THIS USE FROM THIS ONSTREAM RESERVOIR.

Volume: 25.00 AC-FT

Climatic Area: 3 - MODERATE

Maximum Acres: 19.90

Source Name: SPRING, UNNAMED TRIBUTARY OF AUCHARD CREEK

Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		NWSESW	28	18N	5W	LEWIS AND CLARK

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: DAM

Reservoir: ONSTREAM

<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
	NWSESW	28	18N	5W	LEWIS AND CLARK

Diversion to Reservoir: DIVERSION # 1

Dam Height: 11.00 FEET

Depth: 8.00 FEET

Surface Area: 0.25 ACRES

Capacity: 0.80 ACRE-FEET

SEE THE RESERVOIR WORKSHEET IN THE CLAIM FILE FOR ADDITIONAL RESERVOIR DATA.

Period of Use: MAY 1 TO NOVEMBER 1

Place of Use:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	19.90		S2SW	28	18N	5W	LEWIS AND CLARK

Total: 19.90

Remarks:

THE WATER RIGHTS FOLLOWING THIS STATEMENT ARE SUPPLEMENTAL WHICH MEANS THE RIGHTS HAVE OVERLAPPING PLACES OF USE. THE RIGHTS CAN BE COMBINED TO IRRIGATE ONLY OVERLAPPING PARCELS. EACH RIGHT IS LIMITED TO THE FLOW RATE AND PLACE OF USE OF THAT INDIVIDUAL RIGHT. THE SUM TOTAL VOLUME OF THESE WATER RIGHTS SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

96934-00

96935-00

**POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
DEARBORN RIVER
BASIN 41U**

Water Right Number: 41U 96935-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: ELLEN K MURPHY
4413 GLASS DR
HELENA, MT 59602 5602

Priority Date: MAY 15, 1906

Type of Historical Right: FILED

Purpose (use): IRRIGATION

Irrigation Type: FLOOD

Flow Rate: A SPECIFIC FLOW RATE HAS NOT BEEN DECREED FOR THIS USE FROM THIS ONSTREAM RESERVOIR.

Volume: 25.00 AC-FT

Climatic Area: 3 - MODERATE

Maximum Acres: 19.90

Source Name: SPRING, UNNAMED TRIBUTARY OF AUCHARD CREEK

Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		NWSESW	28	18N	5W	LEWIS AND CLARK

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: DAM

Reservoir: ONSTREAM

<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
	NWSESW	28	18N	5W	LEWIS AND CLARK

Diversion to Reservoir: DIVERSION # 1

Dam Height: 11.00 FEET

Depth: 8.00 FEET

Surface Area: 0.25 ACRES

Capacity: 0.80 ACRE-FEET

SEE THE RESERVOIR WORKSHEET IN THE CLAIM FILE FOR ADDITIONAL RESERVOIR DATA.

Period of Use: APRIL 1 TO NOVEMBER 1

Place of Use:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	19.90		S2SW	28	18N	5W	LEWIS AND CLARK

Total: 19.90

Remarks:

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96934-00

96935-00